

REMARKS

This application has been reviewed in view of the Office Action mailed on February 28, 2007. Claims 1, 2 and 5-9 are pending in the application with Claim 1 being in independent form. By the present Amendment, Claim 1 has been amended in part and Claims 3, 4 and 19 have been canceled. No new matter is believed to be introduced by the amendments.

Claims 1, 8, and 9 stand rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 5,954,259 to Viola et al. (hereinafter Viola). It is respectfully submitted that the present invention as claimed is patentably distinguishable over Viola. With regard to independent Claim 1 as amended, Viola fails to teach, disclose or suggest “a pressure sensitive trigger which regulates the advancement of said roll nut along said lead screw which, in turn, regulates the speed at which said surgical fasteners are deformed,” as recited. As stated on page 4 of the Office Action, Viola “does not expressly disclose that the drive assembly is selectively variable to regulate the speed at which the surgical fasteners are deformed, and the stapler comprises a pressure sensitive trigger.” Accordingly, in view of the foregoing, withdrawal of this rejection is respectfully requested.

Claims 2 and 5-7 stand rejected under 35 USC § 103(a) as being anticipated by Viola in view of U.S. Patent Application No. 2002/0096550 to Green et al (hereinafter Green). Applicants contend that, for at least the reasons discussed above, this obviousness rejection has been overcome. Moreover, as stated in the Office Action, Viola does not disclose that “the drive assembly is selectively variable to regulate the speed at which the surgical fasteners are deformed, and *the stapler comprises a pressure sensitive trigger.*” (Emphasis added). It is respectfully submitted that Green does not cure the above deficiency. In fact, nowhere does

Green teach, disclose, or suggest “*a pressure sensitive trigger* which regulates the advancement of said roll nut along said lead screw which, in turn, regulates the speed at which said surgical fasteners are deformed,” as recited in presently amended Claim 1. (Emphasis added).

Accordingly, in view of the foregoing, withdrawal of this rejection is respectfully requested.

Claims 3, 4 and 19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Viola in view of U.S. Patent No. 3,859,996 to Mizzy et al. (hereinafter Mizzy). By the present Amendment, Claims 3, 4 and 19 have been canceled and Claim 1 has been amended to include what Applicants believe to be a novel element of canceled Claim 19, the present rejection notwithstanding. Therefore, independent Claim 1 recites substantially similar limitations as the canceled independent Claim 19 and thus, the present rejection will be addressed with reference to independent Claim 1, as amended.

As stated in the Office Action, Viola does not disclose “that the drive assembly is selectively variable to regulate the speed at which the surgical fasteners are deformed, and the stapler comprises a pressure sensitive trigger.” It is respectfully submitted that Mizzy does not cure the above deficiency. Claim 1, as amended, recites “a pressure sensitive trigger which regulates the advancement of said roll nut along said lead screw which, in turn, *regulates the speed at which said surgical fasteners are deformed.*” In contrast, Mizzy discloses “a pressure sensitive triggering mechanism for initiating the *administration of a dose responsive to a pre-determined pressure being exerted by the apparatus against the subject.*” (Col. 2, lines 29-32). (Emphasis added). Thus, the mechanism of Mizzy varies the pressure required to initiate a dosage of medicament rather than a pressure sensitive trigger that varies the speed of deformation of a staple based on the amount of pressure on the trigger. Moreover, Mizzy teaches that pressure may be varied for a triggering event (e.g., inoculation of “a young chick” or inoculation

of "a horse" by adjusting the triggering mechanism (Col. 8, lines 24-33)), not varied to control the speed of deformation of staples or any other parameters or characteristics of the prior art device. An exhaustive search of the specification of Mizzy does not yield any teaching or suggestion of this novel feature. Moreover, varying the speed of a dose of medicament is counter intuitive since this would directly result in prolonged discomfort/pain on a patient/subject level. Thus, Mizzy clearly teaches away from controlling the speed of deforming staples. Accordingly, in view of the foregoing, withdrawal of this rejection is respectfully requested.

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application, namely Claims 1, 2, and 5-9, are believed to be in condition for allowance.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call the Applicant's undersigned attorney at the Examiner's convenience.

Respectfully submitted,



Edward C. Meagher
Reg. No. 41,189
Attorney for Applicant

Carter, DeLuca, Farrell & Schmidt, LLP
445 Broad Hollow Road
Suite 225
Melville, New York 11747
Tel.: (631) 501-5700
Fax: (631) 501-3526

Mailing Address:
Chief Patent Counsel
UNITED STATES SURGICAL
Division of Tyco Healthcare Group LP
195 McDermott Road
North Haven, CT 06473
(203) 492-8193